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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT TACOMA**

10 **MARY A. KELLOGG, as Personal**
11 **Representative of the ESTATE OF JAMES**
12 **H. HAMRE,**

13 **Plaintiff,**

14 **v.**

15 **NATIONAL RAILROAD PASSENGER**
16 **CORPORATION, a/k/a AMTRAK, a**
17 **District of Columbia corporation; and,**
18 **DOE DEFENDANTS 1-50,**

19 **Defendants.**

Case No. _____

COMPLAINT

JURY DEMAND

20 Plaintiff Mary A. Kellogg, as Personal Representative of the Estate of James H. Hamre,
21 by and through her undersigned counsel, for complaint and cause of action against Defendant
22 National Railroad Passenger Corporation (“Amtrak”) and Doe Defendants 1-50, hereby alleges
23 and avers as follows:

24 **I. NATURE OF ACTION**

25 1.1 This is an action for the wrongful death of Mr. James H. Hamre, brought against
Defendant National Railroad Passenger Corporation (“Amtrak”), for its negligence and fault in
causing Mr. Hamre’s death, and for the injuries suffered by Mr. Hamre’s family members as a result.

1 1.2 On December 18, 2017, Mr. Hamre was a passenger riding aboard Amtrak Cascades
2 Train 501, when that train derailed and crashed near Dupont, Washington.

3 1.3 This crash was caused by the train traveling at unsafe speeds which was due to
4 Amtrak's negligent track design, negligent track maintenance and repair, and its negligent training
5 and supervision of operating personnel, among other things.

6 1.4 Mr. Hamre died as a result of critical injuries he suffered in the crash.

7 1.5 Defendant Amtrak was negligent and is at fault in causing this crash, including but
8 not limited to via actions and omissions of persons or entities for which Amtrak is vicariously liable.

9 1.6 Decedent Mr. Hamre was not at fault in any way in causing this crash, any of his
10 own injuries, or his death.

11 1.7 On or about April 10, 2018, Defendant Amtrak reached an out-of-court settlement
12 with the Estate of James Hamre, for the injuries and death it caused to Mr. Hamre.

13 1.8 However, this settlement did not address or resolve the causes of action belonging
14 to Mr. Hamre's siblings for their own personal injuries, arising from the wrongful death of their
15 brother.

16 1.9 This action is brought for the benefit of wrongful death claimants Mary A. Kellogg,
17 and Michael Kellogg, who were not parties to or beneficiaries of the prior settlement.

18 1.10 These wrongful death causes of action were newly created by Washington's
19 Legislature as a matter of law, effective July 28, 2019, which is more than one year after the date of
20 the Estate's initial settlement with Amtrak.

21 1.11 As a matter of law, a prior settlement cannot extinguish unique causes of action that
22 did not exist under the law at the time of the settlement, and where the newly-cognizable plaintiffs
23 with those newly-created causes of action were not parties to that settlement.

24 1.12 No party to the prior settlement agreement ever contemplated or intended wrongful
25 death claims by Mr. Hamre's siblings Mary Kellogg and Michael Hamre to be subject to that prior
settlement.

1.13 The settlement agreement did not name or identify either Mary Kellogg or Michael Hamre as settling parties.

1.14 The settling parties did not exchange any consideration for any purported settlement of the siblings' wrongful death claims.

1.15 The Estate did not have the legal capacity or authority to settle any claims of Mary Kellogg and/or Michael Hamre at the time of the prior settlement agreement.

1.16 To the extent that any Defendant herein claims accord and satisfaction, or otherwise seeks to resist Plaintiff's claims on the basis of contractual language, the underlying settlement agreement is vague and ambiguous with respect to the claims and persons released.

1.17 The Estate is the proper legal vehicle for bringing the claims of these wrongful death beneficiaries, pursuant to RCW 4.20.010, *et seq.*

II. PARTIES

2.1 Plaintiff Mary A. Kellogg is the duly-appointed Personal Representative of the Estate of James H. Hamre, effective May 11, 2020, which Estate is being administered in the Pierce County, Washington Superior Court, under cause number 18-4-00022-2.

2.2 Defendant National Railroad Passenger Corporation ("Amtrak") is a corporation formed and existing pursuant to the laws of the District of Columbia. Amtrak was at all material times and currently is in the business of operating a system of railroad tracks and train vehicles in the State of Washington. That system included lines of track within the District where this action is filed.

2.3 On December 18, 2017, Amtrak owned and operated Amtrak Cascades Train 501 operating between Seattle, Washington and Portland, Oregon and intermediate points.

2.4 Doe Defendants 1-50 are fictitiously-named persons or entities that, on information and belief, owned, planned, designed, built, financed, approved, inspected, maintained, and/or repaired the line of tracks at the Point Defiance Bypass, Lakewood Subdivision, Dupont, Washington, where Amtraks Cascades Train 501 derailed on December 18, 2017. The true names

1 and identities of these defendants are presently unknown and unavailable to Plaintiff. If and when
2 the true names and identities of these defendants are ascertained through further investigation and
3 discovery, Plaintiff reserves the right to substitute the proper names of such persons or entities, and
4 such substitution shall relate back to the date of this Complaint.

5 2.5 Doe Defendants 1-50 are fictitiously-named persons or entities that, on information
6 and belief, also include persons or entities who designed, manufactured, supplied, purchased,
7 inspected, maintained, repaired, and/or operated the locomotive and passenger and sleeper cars
8 making up Amtrak Cascades Train 501, and all components and parts thereof; and/or provided
9 training related to the train and the track at issue. The true names and identities of these defendants
10 are presently unknown and unavailable to Plaintiff. If and when the true names and identities of
11 these defendants are ascertained through further investigation and discovery, Plaintiff reserves the
12 right to substitute the proper names of such persons or entities, and such substitution shall relate
back to the date of this Complaint.

13 2.6 On information and belief, each of said Doe Defendants are responsible for the
14 events at issue in this action, and were a proximate cause of injuries and damages as alleged
15 herein. Plaintiff will seek leave to amend this Complaint to allege the true names and capacities
of such Doe Defendants as they become known or are discovered.

16 2.7 On information and belief, at all material times, each Doe Defendant was the
17 agent, partner, servant, employer, independent contractor, and/or joint venture of each other
18 Defendant and, at all times herein mentioned, was acting within the course and scope of said
19 agency, partnership, employment, contract or joint venture.

20 **III. JURISDICTION AND VENUE; JURY DEMAND**

21 3.1 This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
22 1331, because, on information and belief, Defendant Amtrak is a Congressionally-incorporated
23 corporation, over half of whose capital stock is owned by the federal government.

1 3.2 This Court also has subject matter jurisdiction over this action pursuant to 28
2 U.S.C. § 1332, because the parties herein are citizens of different States, and because the amount
3 in controversy in this action is in excess of the statutory threshold.

4 3.3 Venue is proper in the Western District of Washington pursuant to 28 U.S.C. §
5 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred
6 in this District, and because Amtrak is subject to the Court's personal jurisdiction with respect to
7 this claim.

8 3.4 Pursuant to Fed. R. Civ. P. 38, and LCR 38(b), Plaintiff hereby demands that this
9 matter be tried to a jury.

10 IV. GENERAL ALLEGATIONS

11 4.1 On December 18, 2017, Defendant Amtrak, through its employees and/or agents,
12 operated, managed, maintained, supervised owned, designed, constructed and/or controlled
13 Amtrak Cascades Train 501, which originated in Seattle, Washington and was destined for
14 Portland, Oregon.

15 4.2 On December 18, 2017, Amtrak Cascades Train 501 was operated by employees
16 and/or agents of Defendant Amtrak.

17 4.3 Defendant Amtrak sold decedent James H. Hamre a ticket on Amtrak Cascades
18 Train 501, for travel on December 18, 2017, and Plaintiff boarded the train as a passenger at King
19 Street Station in Seattle, Washington.

20 4.4 On December 18, 2017, at or near Dupont, Washington, Amtrak Cascades Train
21 501 approached the bridge crossing I-5 at a speed far in excess of the authorized, posted, and safe
22 speed for that segment of track.

23 4.5 At that date and time, Amtrak Cascades Train 501 was unable to negotiate the
24 curve at the bridge crossing I-5 due to excessively high speed, and the train derailed and crashed,
25 resulting in scores of injuries and multiple fatalities.

1 4.6 As a result of the derailment, decedent Mr. Hamre was propelled violently about
2 and within the railroad car he occupied, suffering severe injuries that resulted in his death.

3 4.7 In 2008, Congress enacted the Rail Safety Improvement Act (RSIA) which
4 required passenger railroads in the United States—including Amtrak—to install a Positive Train
5 Control System on their trains by the end of 2015.

6 4.8 The Positive Train Control system was designed and intended to increase safety,
7 reduce, correct, or prevent operator error, and prevent derailments, among other things.

8 4.9 At all material times, Defendant Amtrak was authorized to utilize and implement,
9 and was provided with access to, a Positive Train Control system.

10 4.10 Despite this fact, the Positive Train Control system was not operable on Amtrak
11 Cascades Train 501 at the time of the December 18, 2017 derailment.

12 4.11 At all material times, Defendant Amtrak knowingly and intentionally failed to
13 utilize an operable Positive Train control system on Amtrak Cascades Train 501, despite
14 knowledge of the actual and avoidable dangers it was subjecting its passengers to without such a
15 system in operation.

16 4.12 On December 18, 2017, Defendant Amtrak released the Amtrak Cascades Train
17 501 into passenger service for the subject trip, despite knowing it had experienced an electrical
18 system failure earlier that day, and despite further knowledge that the rear locomotive unit
19 electrical linkage was not connected or properly linked.

20 4.13 This latter defect made the rear engine unit unavailable for additional braking
21 effect when needed, and that at the time of the crash this disconnected rear unit therefore acted
22 to push into the rear passenger cars, causing further harm to the train and its occupants in the
23 derailment and crash.

24 4.14 At all relevant times, Defendant Amtrak failed to provide sufficient supervision
25 and training to its employees and agents who operated the train vehicles in the safe and proper
operation of trains on the subject section of track, including via adequate familiarization trips.

1 5.2.4 Defendants failing to enable or provide fully operational Positive Train
2 Control or other appropriate safety devices on this train; and

3 5.2.5 Failing to comply with applicable federal standards of care and applicable
4 federal statutes or regulations.

5 5.3 As a proximate result of Defendants' negligence and the resulting death of James
6 H. Hamre, Plaintiff and the other sibling wrongful death claimants herein suffered significant
7 damages, including but not limited to mental anguish, emotional pain and suffering, loss of
8 companionship, loss of support, loss of services, and loss of relationship.

9 5.4 The amount of damages suffered by Plaintiff and the other sibling wrongful death
10 beneficiaries herein is a question for the finder of fact, but is in excess of the statutory threshold of
11 28 U.S.C. § 1332.

12 **VI. PRAYER FOR RELIEF**

13 Having stated the foregoing causes of action, Plaintiff now requests that the Court award the
14 following relief:

15 6.1 A judgment in favor of Plaintiff and against Defendants, jointly and severally,
16 awarding the wrongful death beneficiaries of Plaintiff Estate of James H. Hamre their past and
17 future special damages, in an amount to be determined at trial;

18 6.2 A judgment in favor of Plaintiff and against Defendants, jointly and severally,
19 awarding the wrongful death beneficiaries of Plaintiff Estate of James H. Hamre their past and
20 future general damages, in an amount to be determined at trial;

21 6.3 An award of Plaintiff's reasonable attorneys' fees and costs incurred herein, to the
22 extent permitted by law; and

23 6.4 Such other relief as the Court may deem just and equitable under the
24 circumstances.

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2 Dated: July 3, 2020

3 **ROSSI VUCINOVICH PC**

4 By: s/ Benjamin T. G. Nivison

5 Benjamin T. G. Nivison, WSBA No. 39797

6 ATTORNEYS FOR PLAINTIFF